

In the Matter of Merchant Mariner's Document No. Z-940846 nad all  
other Licenses and Documents  
Issued to: THOMAS W. MULLANEY

DECISION AND FINAL ORDER OR THE COMMANDANT  
UNITED STATES COAST GUARD

947

THOMAS W. MULLANEY

This appeal has been taken in accordance with Title 46 United States Code 239(g), Public Law 500 (46 U.S.C. 239-b) and Title 46 Code of Federal Regulations Sec. 137.11-1.

An Examiner of the United States Coast Guard conducted a hearing at San Francisco, California, and by order dated 2 August 1956, revoked the seaman documents of Appellant based upon proof of a specification alleging in substance that, on or about 25 May 1956, he was convicted for violation of the narcotic drug laws of the State of California.

Appellant was not present at the hearing but he was represented by counsel of his own choice. Counsel entered a plea of "nolo contendere" on behalf of Appellant.

The Investigating Officer made his opening statement and introduced in evidence a certified copy of the record of Appellant's conviction as alleged in the specification.

The Examiner concluded that the specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-940846 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 25 May 1956, Appellant was convicted by the Superior Court of the State of California in and for the City and County of San Francisco, a court of record, for a violation of the narcotic drug laws of the State of California: to wit, section 11,500 of the State Health and Safety Code (possession of marijuana).

OPINION

Appellant has appealed solely on the ground that the decision was unfair because he did not have "the benefit of an official hearing." In the absence of greater specificity on appeal, it is sufficient to note that Appellant's rights were fully protected at the hearing although he elected not to appear in person but through counsel.

A possible jurisdictional issue issued in the record because the charge and specification form sheet, with which Appellant was personally served prior to the hearing, states As part of the printed form) that this action is under R.S. 4450 (46 U.S.C. 239) and that Appellant was serving under the authority of his Merchant Mariner's Document. The handwritten specification clearly sets forth an offense under Public Law 500 of 15 July 1954 (46 U.S.C. 239a-b) wherein there is no requirement that the seaman be acting under authority of his document. But this defect was cured by the facts that counsel entered a plea of "nolo contendere" on behalf of Appellant, this admitting all the allegations, and it was clearly contemplated by all the parties at the hearing that this was a proceeding where the provisions of Public Law would apply.

Regardless of whether the action is taken under 46 U.S.C. 239 or Public Law 500 (46 U.S.C. 239a-b), an order of revocation is required when the specification is based upon a conviction for violation of a narcotic drug law.

The order of the Examiner dated at San Francisco, California, on 2 August 1956, is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 8th day of January, 1957.